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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,910	09/26/2000	Thomas Werner	GR-98-P-1061	2580

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EXAMINER	
NGUYEN, TOAN D	

ART UNIT	PAPER NUMBER
2665	10

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/600,910	Applicant(s) WERNER ET AL.	
	Examiner Toan D Nguyen	Art Unit 2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 May 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2 and 4-6* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4 and 6* is/are rejected.

7)☒ Claim(s) *5* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *17 May 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *5* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Drawings

1. The drawings were received on May 17, 2004. The drawing is Figure 1.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ginzboorg et al (US 6,240,091).

For claim 1, Ginzboorg et al disclose implementation of access service, having the following steps:

establishing a connection between the user terminal (figure 3a, reference PC) and the server (figure 3a, reference WD) at least partly by means of an ADSL connection (figure 2, references A1, A2) (col. 5 lines 49-59).

However, Ginzboorg et al do not disclose displaying a plurality of bandwidths that can be selected on a display device of the user terminal, transmitting bandwidth selection data, based on the selected one of the plurality of bandwidths, from the user terminal to the network management system assigned to the server, and

transmitting information data from the server to the user terminal via the ADSL connection and/or in the opposite direction with a bandwidth corresponding to the previously transmitted bandwidth selection data, in which case the network management system communicates billing data to a billing device, assigned to the server, in a manner dependent on the previously transmitted bandwidth selection data.

To include displaying a plurality of bandwidths that can be selected on a display device of the user terminal, transmitting bandwidth selection data, based on the selected one of the plurality of bandwidths, from the user terminal to the network management system assigned to the server, and

transmitting information data from the server to the user terminal via the ADSL connection and/or in the opposite direction with a bandwidth corresponding to the previously transmitted bandwidth selection data, in which case the network management system communicates billing data to a billing device, assigned to the server, in a manner dependent on the previously transmitted bandwidth selection data would have been obvious to one of ordinary skill in the art since Ginzboorg et al disclose at col. 7 lines 21-27, figure 4 ,"from the drop-down list of the selection window the user can select the type of connection required. The connections can be divided into different types..." The different types of connections can be interpreted as different types of bandwidths (displaying a plurality of bandwidths that can be selected on a

display device of the user terminal means), transmitting bandwidth selection data, based on the selected one of the plurality of bandwidths, from the user terminal (figure 3a, reference PC) to the network management system (figure 3a, reference NW1) assigned to the server (figure 3a, reference WD) (col. 8 lines 6-13), and

transmitting information data from the server (figure 3a, reference WD) to the user terminal (figure 3a, reference PC) via the ADSL connection and/or in the opposite direction with a bandwidth corresponding to the previously transmitted bandwidth selection data (figure 5, reference arrow A, col. 8 lines 30-34), in which case the network management system (figure 3a, reference NW1) communicates billing data to a billing device (figure 3a, reference BS), assigned to the server (figure 3a, reference WD, col. 5 line 64 to col. 6 line 7), in a manner dependent on the previously transmitted bandwidth selection data (figure 5, col. 8 lines 6-20).

5. Claims 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ginzboorg et al (US 6,240,091) in view of Bandelin et al (WO 97/364429).

For claim 2, Ginzboorg et al disclose the bandwidth selection data are transmitted (figure 5, col. 8 lines 6-9). However, Ginzboorg et al do not disclose an embedded operation channel of the ADSL connection. In an analogous art, Bandelin et al disclose an embedded operation channel (figure 4, reference 42) of the ADSL connection (page 11 lines 17-21 and page 12 lines 15-22). One skilled in the art would have recognized an embedded operation channel of the ADSL connection to use the teachings of Bandelin et al in the system of Ginzboorg et al. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to use the embedded operation channel of the ADSL connection as taught by Bandelin

et al in Ginzboorg et al's system with the motivation being to contain the operation and maintenance data for the transport network management system (page 10 lines 34-36).

6. Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginzboorg et al (US 6,240,091) in view of Sawyer Francoi (WO 97/16034).

For claim 4, Ginzboorg et al disclose the predetermined bandwidths that can be selected is set in a manner dependent on the system capabilities (col. 7 lines 21-22). However, Ginzboorg et al do not disclose the maximum bandwidth of the predetermined bandwidths. In an analogous art, Sawyer Francoi discloses the maximum bandwidth of the predetermined bandwidths (figure 3A, reference 48, page 11 line 8). One skilled in the art would have recognized the maximum bandwidth of the predetermined bandwidths to use the teachings of Sawyer Francoi in the system of Ginzboorg et al. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to use the maximum bandwidth of the predetermined bandwidths as taught by Sawyer Francoi in Ginzboorg et al's system with the motivation being to derive an estimate of the total bandwidth usage amount (page 11 lines 18-19).

For claim 6, Ginzboorg et al disclose implementation of access service, the method comprising the steps of:

establishing an ADSL connection (figure 2, references A1, A2) between the user terminal (figure 3a, reference PC) and the server (figure 3a, reference WD) (col. 5 lines 49-59).

Ginzboorg et al do not disclose:

displaying on the user terminal a plurality of bandwidths that are available for selection, the plurality of bandwidths including a maximum bandwidth that can be selected dependent on the network capabilities and at least one bandwidth less than the maximum bandwidth;

at the user terminal selecting one of the plurality of bandwidth and transmitting the selected one of the bandwidths to the network management system;

transmitting information between the server and the user terminal via the ADSL connection in a manner consistent with the selected one of the bandwidth; and

the network management system communicating billing data related to the transmission between the server and the user terminal to a billing device for the server, the billing data being based on the selected one of the bandwidths.

To include displaying on the user terminal a plurality of bandwidths that are available for selection, at the user terminal selecting one of the plurality of bandwidths and transmitting the selected one of the bandwidths to the network management system;

transmitting information between the server and the user terminal via the ADSL connection in a manner consistent with the selected one of the bandwidth; and

the network management system communicating billing data related to the transmission between the server and the user terminal to a billing device for the server, the billing data being based on the selected one of the bandwidths would have been obvious to one of ordinary skill in the art since Ginzboorg et al disclose at col. 7 lines 21-27, figure 4 ,"from the drop-down list of the selection window the user can select the type of connection required. The connections can be divided into different types..." The different types of connections can be interpreted as different types of bandwidths (displaying on the user terminal a plurality of bandwidths that are available for selection means), at the user terminal (figure 3a, reference PC) selecting one of the plurality of bandwidth (col. 8 lines 6-13) and transmitting the selected one of the bandwidths to the network management system (figure 3a, reference NW1) (col. 5 line 56 to col. 6 line 6);

transmitting information between the server (figure 3a, reference WD) and the user terminal (figure 3a, reference PC) via the ADSL connection in a manner consistent with the selected one of the bandwidth (figure 5, reference arrow A, col. 8 lines 30-34); and

the network management system (figure 3a, reference NW1) communicating billing data related to the transmission between the server (figure 3a, reference WD), and the user terminal (figure 3a, reference PC) to a billing device (figure 3a, reference BS) for the server (figure 3a, reference WD, col. 5 line 49 to col. 6 line 7), the billing data being based on the selected one of the bandwidths (figure 5, col. 8 lines 6-20).

Ginzboorg et al disclose the plurality of bandwidths that can be selected dependent on the network capabilities (col. 7 lines 21-22). However, Ginzboorg et al do not disclose a maximum bandwidth and at least one bandwidth less than the maximum bandwidth. In an analogous art, Sawyer Francoi discloses a maximum bandwidth (figure 3A, reference 48, page 11 line 8) and at least one bandwidth less than the maximum bandwidth (page 8 line 13-14).

One skilled in the art would have recognized a maximum bandwidth and at least one bandwidth less than the maximum bandwidth to use the teachings of Sawyer Francoi in the system of Ginzboorg et al. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention, to use the maximum bandwidth and at least one bandwidth less than the maximum bandwidth as taught by Sawyer Francoi in Ginzboorg et al's system with the motivation being to maintain the connection in place, thus limiting to some degree others from simultaneously accessing the system and using na available part of the bandwidth due to a reduction in communication capacity and to derive an estimate of the total bandwidth usage amount (page 8 lines 14-18 and page 11 lines 18-19).

Allowable Subject Matter

7. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. Applicant's amendment on May 17, 2004 necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toan D Nguyen whose telephone number is 703-305-0140. The examiner can normally be reached on Monday- Friday (7:00AM-4:30PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Huy Vu can be reached on 703-308-6602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-9600.

TN
TN

HUY D. VU
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